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### THE PARTIES

- 1. Microsoft is a Washington corporation with its principal place of business located at One Microsoft Way, Redmond, Washington. Microsoft develops, markets, distributes and licenses computer software.
- 2. Upon information and belief, defendant Coast Networks, Inc. is a California corporation also known as DK Systems ("DK Systems") that does business in Rohnert Park, California. Upon information and belief, DK Systems is engaged in the advertising, marketing, and distribution of computer hardware and software, including purported Microsoft software.
- 3. Upon information and belief, defendant Corby Brasset is an officer, director and/or principle and/or owns, operates and/or otherwise controls DK Systems. Upon information and belief, Corby Brasset (a) personally participated in and/or had the right and ability to direct and control the wrongful conduct alleged in this Complaint, and (b) derived direct financial benefit from that wrongful conduct. Upon information and belief, Corby Brasset resides and transacts substantial business in this district.

### **JURISDICTION**

- 4. This Court has subject matter jurisdiction over Microsoft's claims for trademark infringement, copyright infringement and related claims pursuant to 15 U.S.C. § 1121, 17 U.S.C. § 501, and 28 U.S.C. §§ 1331 and 1338(a).
- 5. This Court has supplemental jurisdiction over Microsoft's claims arising under the laws of the State of California to 28 U.S.C. § 1367(a) because these claims are so related to Microsoft's claims under federal law that they form part of the same case or controversy and derive from a common nucleus of operative fact.

### **VENUE**

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and § 1400(a) because (a) the acts of infringement and other wrongful conduct alleged occurred in the Northern District of California; (b) the Defendant may be found in the Northern District of California; and (c) the Defendant has a sufficient connection with the Northern District of California to make venue proper in this district, all as alleged in this Complaint.

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### INTRADISTRICT ASSIGNMENT

7. A substantial part of the events giving rise to Microsoft's claims occurred in Sonoma County, however, this action is an Intellectual Property Action and accordingly, pursuant to Local Rule 3-2(c), it should be assigned on a district wide basis.

### **FACTS COMMON TO ALL CLAIMS**

- 8. Microsoft develops, advertises, markets, distributes, and licenses a number of computer software programs. Microsoft's software programs are recorded on magnetic diskettes and/or CD-ROMs, and they are packaged and distributed together with associated proprietary materials such as user's guides, user's manuals, end user license agreements, certificates of authenticity, and other related components.
- 9. Microsoft Windows XP Professional: Microsoft developed, advertises, markets. distributes, and licenses a software package known as Microsoft Windows XP Professional ("Windows XP Pro"). Windows XP Pro is an operating system for desktop and laptop systems. It performs a number of computer-related operations including, but not limited to, providing support for various applications and allowing remote access to data and applications stored on Windows XP Pro desktops from network connections. Microsoft holds a valid copyright in Windows XP Pro (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft Windows XP Pro, bearing the number TX 5-407-055, is attached hereto as Exhibit 1 and is incorporated by reference.
- 10. Microsoft Office 2003 Pro: Microsoft Office 2003 Professional ("Office 2003 Pro") is a suite of popular Microsoft software programs. Microsoft holds a valid copyright in Office 2003 Pro (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft Office 2003 Pro, bearing the number TX-5-837-617, is attached hereto as Exhibit 2 and is incorporated by reference. Office 2003 Pro includes the following popular Microsoft software programs:

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A. <u>Microsoft Office Excel 2003</u>, a program that allows users to create spreadsheets, perform calculations, and store numerical data. Microsoft holds a valid copyright in Microsoft Office Excel 2003 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Office Excel 2003, bearing the number TX 5-837-636, is attached hereto as Exhibit 3 and is incorporated by reference.

- B. <u>Microsoft Office Outlook 2003</u>, a program that allows users and networked teams to create and manage calendars, tasks, and contacts. Microsoft holds a valid copyright in Microsoft Office Outlook 2003 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Office Outlook 2003, bearing the number TX 5-900-087, is attached hereto as Exhibit 4 and is incorporated by reference.
- C. <u>Microsoft Office PowerPoint 2003</u>, a program that allows users to create, organize, and present overhead and slide presentations. Microsoft holds a valid copyright in Microsoft Office PowerPoint 2003 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Office PowerPoint 2003, bearing the number TX 5-852-649, is attached hereto as Exhibit 5 and is incorporated by reference.
- D. <u>Microsoft Office Word 2003</u>, a program that allows users to create and edit reports and documents. Microsoft holds a valid copyright in Microsoft Office Word 2003 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Office Word 2003, bearing the number TX 5-900-088, is attached hereto as Exhibit 6 and is incorporated by reference.

- E. <u>Microsoft Publisher 2003</u>, a desktop publishing program that allows users to create, customize, and publish materials such as newsletters, brochures, flyers, catalogs, and Web sites. Microsoft holds a valid copyright in Microsoft Publisher 2003 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Publisher 2003, bearing the number TX 5-837-618, is attached hereto as Exhibit 7 and is incorporated by reference.
- F. <u>Microsoft Business Contact Manager for Outlook 2003</u>, a program which manages customer relationships. Microsoft holds a valid copyright in Business Contact Manager for Outlook 2003 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Business Contact Manager for Outlook 2003, bearing the number TX 5-877-513, is attached hereto as Exhibit 8 and is incorporated by reference.
- G. <u>Microsoft Access 2003</u>, a program that allows users to create and manipulate databases and store data. Microsoft holds a valid copyright in Microsoft Access 2003 (including user's reference manuals, user's guides, and screen displays) that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for Microsoft Access 2003, bearing the number TX 5-901-713, is attached hereto as Exhibit 9 and is incorporated by reference.
- 11. Microsoft has also duly and properly registered a number of trademarks and a service mark in the United States Patent and Trademark Office on the Principal Register, including, but not limited to:
  - A. "MICROSOFT," Trademark and Service Mark Registration No. 1,200,236, for computer programs and computer programming services;
  - B. "MICROSOFT," Trademark Registration No. 1,256,083, for computer hardware and software manuals, newsletters, and computer documentation;

- C. WINDOWS, Trademark Registration No. 1,872,264 for computer programs and manuals sold as a unit;
- D. COLORED FLAG DESIGN, Trademark Registration No. 2,744,843, for computer software;
- E. "POWERPOINT," Trademark Registration No. 1,475,795, for pre-recorded computer programs recorded on magnetic disks;
- F. "MICROSOFT ACCESS," Trademark Registration No. 1,741,086, for computer programs for use with databases and manuals sold as a unit; and
- G. "OUTLOOK," Trademark Registration No. 2,188,125, for computers programs, specifically programs providing enhanced electronic mail and scheduling capabilities and instructional manuals sold as a unit;
- H. COLOR FOUR SQUARE LOGO, Trademark Registration No. 2,999,281, for computer software, including application and business software for use in word processing, spreadsheets, presentation graphics, e-mail, and scheduling;

True and correct copies of the Trademark Registrations for A through I above are attached hereto as Exhibits 10 through 17, respectively, and are incorporated herein by reference.

### **Defendants' Infringement**

- 12. Defendants are engaged in the advertising, marketing, and distribution of computer hardware and software, including software covered by Microsoft's registered copyrights and bearing Microsoft's registered trademarks or imitations thereof.
- 13. In February 2009, Defendants distributed to an investigator computer systems with infringing Windows XP Pro and Office 2003 Pro software.
- 14. On information and belief, this is not an isolated incident. Rather, Defendants have been and continue to be involved in advertising, marketing, installing and/or distributing infringing copies of Microsoft's software to unidentified persons or entities. On information and belief, Defendants' distributions of purported Microsoft software are the result of Defendants' advertising and marketing the availability of such materials.

- 15. On information and belief, Defendants' wrongful conduct includes the advertising, marketing, installing, and/or distribution of "infringing materials," specifically reproductions, copies, or colorable imitations of the Microsoft copyrighted software and/or the Microsoft trademarks, logos, and service mark described in this Complaint.
- 16. On information and belief, Defendants have committed and are continuing to commit acts of copyright and trademark infringement against Microsoft. On information and belief, at a minimum, Defendants were willfully blind and acted in reckless disregard of Microsoft's registered copyrights and marks.
- 17. On information and belief, by their advertising activities and unauthorized use of Microsoft's marks to describe the items that they are distributing, Defendants have misappropriated Microsoft's advertising ideas and style of doing business and have infringed Microsoft's copyrights, titles, and slogans.
- 18. On information and belief, the injuries and damages that Microsoft has sustained have been directly and proximately caused by Defendants' wrongful misappropriation of Microsoft's advertising ideas and style of doing business and infringement of Microsoft's copyrights, titles, and slogans.

### First Claim

### [Copyright Infringement -- 17 U.S.C. § 501, et seq.]

#### **Against Defendants**

- 19. Microsoft realleges, and incorporates by this reference, each and every allegation set forth in paragraphs 1 through 18 inclusive.
- 20. Microsoft is the sole owner of Microsoft Windows XP Pro, Office 2003 Pro, Office Excel 2003, Office Outlook 2003, Office PowerPoint 2003, Publisher 2003, Office Word 2003, Business Contact Manager for Outlook 2003, and Access 2003 and the corresponding Certificates of Registration.
- 21. Defendants have infringed the copyrights in Microsoft's software, including but not limited to Microsoft Windows XP Pro, Office 2003 Pro, Office Excel 2003, Office Outlook 2003, Office PowerPoint 2003, Publisher 2003, Office Word 2003, Business Contact Manager for

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Outlook 2003, and Access 2003, by distributing infringing materials in the United States of America without approval or authorization from Microsoft.

22. Defendants' conduct has been willful within the meaning of the Copyright Act. At a minimum, Defendants acted with willful blindness to and in reckless disregard of Microsoft's registered copyrights.

As a result of the wrongful conduct, Defendants are liable to Microsoft for

- copyright infringement. 17 U.S.C. § 501. Microsoft has suffered damages. Microsoft has suffered, and will continue to suffer, substantial losses, including, but not limited to, damage to its business reputation and goodwill. Microsoft is entitled to recover damages, which include its losses and any and all profits Defendants have made as a result of their wrongful conduct. 17 U.S.C. § 504. Alternatively, Microsoft is entitled to statutory damages under 17 U.S.C. § 504(c).
- 24. In addition, because Defendants' infringement has been willful within the meaning of the Copyright Act, the award of statutory damages should be enhanced in accordance with 17 U.S.C. § 504(c)(2).
- 25. Microsoft is also entitled to injunctive relief pursuant to 17 U.S.C. § 502 and to an order impounding any and all infringing materials pursuant to 17 U.S.C. § 503. Microsoft has no adequate remedy at law for Defendants' wrongful conduct because, among other things, (a) Microsoft's copyrights are unique and valuable property which have no readily determinable market value, (b) Defendants' infringement harms Microsoft's business reputation and goodwill such that Microsoft could not be made whole by any monetary award, and (c) Defendants' wrongful conduct, and the resulting damage to Microsoft, is continuing.
- 26. Microsoft is also entitled to recover its attorneys' fees and costs of suit. 17 U.S.C. § 505.

### Second Claim

# [Federal Trademark Infringement – 15 U.S.C. § 1114]

### **Against Defendants**

27. Microsoft realleges, and incorporates by this reference, each and every allegation set forth in paragraphs 1 through 26, inclusive.

- 28. Defendants' activities constitute infringement of Microsoft's federally registered trademarks and service mark in violation of the Lanham Trademark Act, including but not limited to 15 U.S.C. § 1114(1).
- 29. Because Microsoft has marketed, advertised, promoted, distributed, and licensed its software under the trademarks and service mark described in this Complaint, these trademarks and service mark are the means by which Microsoft's software is distinguished from those of others in the same field or related fields.
- 30. Because of Microsoft's long, continuous, and exclusive use of these trademarks and service mark, they have come to mean, and are understood by customers, end users, and the public to signify software of Microsoft.
- 31. The infringing materials that Defendants have and are continuing to use, market, offer, or distribute are likely to cause confusion, mistake, or deception as to their source, origin, or authenticity.
- 32. Further, Defendants' activities are likely to lead the public to conclude, incorrectly, that the infringing materials that Defendants are using, advertising, marketing, offering, or distributing originate with or are authorized by Microsoft, to the damage and harm of Microsoft, its licensees, and the public.
- 33. Upon information and belief, Defendants used, advertised, marketed, offered or distributed infringing material with the willful and calculated purposes of misleading, deceiving, or confusing customers and the public as to the origin and authenticity of the infringing materials and of trading upon Microsoft's goodwill and business reputation.
- 34. Defendants' conduct has been willful within the meaning of the Lanham Act. At a minimum, Defendants acted with willful blindness to and in reckless disregard of Microsoft's registered marks.
- 35. As a result of their wrongful conduct, Defendants are liable to Microsoft for trademark infringement. 15 U.S.C. § 1114(1). Microsoft has suffered, and will continue to suffer, substantial losses, including, but not limited to, damage to its business reputation and goodwill. Microsoft is entitled to recover damages, which include its losses, and any and all

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- profits Defendants have made as a result of their wrongful conduct. 15 U.S.C. § 1117(a). Alternatively, Microsoft is entitled to statutory damages under 15 U.S.C. § 1117(c).
- 36. In addition, because Defendants' infringement of Microsoft's trademarks and service mark was willful, the award of actual damages and profits should be trebled pursuant to 15 U.S.C. §1117(b). Alternatively, the award of statutory damages should be enhanced in accordance with 15 U.S.C. § 1117(c)(2).
- 37. Microsoft is also entitled to injunctive relief pursuant to 15 U.S.C. § 1116(a) and to an order compelling the impounding of all infringing materials being used, offered, marketed, or distributed by Defendants pursuant to 15 U.S.C. § 1116, subsections (a) and (d)(1)(A), and pursuant to 28 U.S.C. § 1651. Microsoft has no adequate remedy at law for Defendants' wrongful conduct because, among other things, (a) Microsoft's trademarks and service mark are unique and valuable property which have no readily determinable market value, (b) Defendants' infringement constitutes harm to Microsoft's business reputation and goodwill such that Microsoft could not be made whole by any monetary award, (c) if Defendants' wrongful conduct is allowed to continue, the public is likely to become further confused, mistaken, or deceived as to the source, origin or authenticity of the infringing materials, and (d) Defendants' wrongful conduct, and the resulting damage to Microsoft, is continuing.
- 38. Microsoft is also entitled to recover its attorneys' fees and costs of suit. 15 U.S.C. § 1117.

### Third Claim

### [False Designation Of Origin, False Description And Representation Of Microsoft Packaging--15 U.S.C. § 1125 et seq.] **Against Defendants**

- 39. Microsoft realleges, and incorporates by this reference, each and every allegation set forth in paragraphs 1 through 38, inclusive.
- Microsoft has designed distinctive and aesthetically pleasing displays, logos, 40. icons, graphic images, and packaging (collectively, "Microsoft visual designs") for its software.

- 41. Defendants' wrongful conduct includes the use, advertising, marketing, offering, or distribution of "imitation visual designs," specifically displays, logos, icons, graphic designs, and/or packaging virtually indistinguishable from Microsoft visual designs. Defendants' use, advertising, marketing, offering, or distribution of imitation visual designs constitutes (a) false designation of origin, (b) false description, and (c) false representation that the imitation visual images originate from or are authorized by Microsoft, all in violation of § 43(a) of the Lanham Trademark Act, set forth at 15 U.S.C. § 1125(a).
- 42. Upon information and belief, Defendants used, advertised, marketed, offered, or distributed imitation visual designs with the willful and calculated purposes of misleading, deceiving, or confusing customers and the public as to the origin and authenticity of the imitation visual designs and of trading upon Microsoft's goodwill and business reputation.
- 43. Defendants' use, advertising, marketing, offering, and distribution of imitation visual designs are likely to continue unless restrained and enjoined.
- 44. As a result of Defendants' use, marketing, offering, and distribution of imitation visual designs, Microsoft has suffered and will continue to suffer damage and losses, including, but not limited to, irreparable injury to its business reputation and goodwill. Microsoft is entitled to injunctive relief and to an order compelling the impounding of all imitation visual designs being used, offered, marketed, or distributed by Defendants. Microsoft has no adequate remedy at law for Defendants' wrongful conduct because, among other things, (a) Microsoft's visual designs are unique and valuable property which have no readily determinable market value, (b) Defendants' use, marketing, or distribution of imitation visual designs constitutes harm to Microsoft's business reputation and goodwill such that Microsoft could not be made whole by any monetary award, and (c) Defendants' wrongful conduct, and the resulting damage to Microsoft, is continuing.

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### Fourth Claim

# [California Common Law Unfair Competition] Against Defendants

- 45. Microsoft realleges, and incorporates by this reference, each and every allegation set forth in paragraphs 1 through 44, inclusive.
- 46. The acts and conduct of Defendants as alleged above in this Complaint constitute unfair competition pursuant to the common law of California.
- 47. Defendants' acts and conduct are likely to confuse the public into believing that the items being offered or distributed by Defendants are sponsored, approved or authorized by Microsoft in violation of Microsoft's rights under the common law of unfair competition of the State of California.
- 48. Defendants' acts and conduct as alleged above have damaged and will continue to damage Microsoft's goodwill and reputation and have resulted in losses to Microsoft and an illicit gain of profit to Defendants in an amount unknown at the present time.

### Fifth Claim

### [For Imposition Of A Constructive Trust Upon The Illegal Profits Of All Defendants] Against Defendants

- 49. Microsoft realleges, and incorporates by this reference, each and every allegation set forth in paragraphs 1 through 48, inclusive.
- 50. Defendants' conduct constitutes deceptive, fraudulent, and wrongful conduct in the nature of passing off the infringing materials as genuine Microsoft software or related components approved or authorized by Microsoft.
- 51. By virtue of their wrongful conduct, Defendants have illegally received money and profits that rightfully belong to Microsoft.
- 52. Upon information and belief, Defendants hold the illegally received money and profits in the form of bank accounts, real property, or personal property that can be located and traced.

53. Defendants hold the money and profits they have illegally received as constructive trustees for the benefit of Microsoft.

### Sixth Claim

# [Accounting] Against Defendants

- 54. Microsoft realleges, and incorporates by this reference, each and every allegation set forth in paragraphs 1 through 53, inclusive.
- 55. Microsoft is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. § 1117, to recover any and all profits of Defendants that are attributable to their acts of infringement.
- 56. Microsoft is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. § 1117, to actual damages or statutory damages sustained by virtue of Defendants' acts of infringement.
- 57. The amount of money due from Defendants to Microsoft is unknown to Microsoft and cannot be ascertained without a detailed accounting by Defendants of the precise number of units of infringing material offered for distribution and distributed by Defendants.

### **PRAYER**

WHEREFORE, Microsoft respectfully requests judgment against the Defendants as follows:

- (1) That the Court enter a judgment against Defendants as indicated below:
- (a) that Defendants have willfully infringed Microsoft's rights in the following federally registered copyrights under 17 U.S.C. § 501:
  - (1) TX 5-407-055 ("Windows XP Professional");
  - (2) TX 5-837-617 ("Office Professional 2003");
  - (3) TX 5-837-636 ("Office Excel 2003");
  - (4) TX 5-900-087 ("Office Outlook 2003");
  - (5) TX 5-852-649 ("Office PowerPoint 2003");
  - (6) TX 5-837-618 ("Publisher 2003");
  - (7) TX 5-900-088 ("Office Word 2003");

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Nos.:

trademarks and service mark, including, but not limited to, the following Trademark Registration

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	1	(1) 1,200,236 ("MICROSOFT");
	2	(2) 1,256,083 ("MICROSOFT");
	3	(3) 1,872,264 ("WINDOWS");
	4	(4) 2,744,843 (COLORED FLAG DESIGN);
	5	(5) 1,475,795 ("POWERPOINT");
	6	(6) 1,741,086 ("MICROSOFT ACCESS");
	7	(7) 2,188,125 ("OUTLOOK");
	8	(8) 2,999,281 (COLOR FOUR SQUARE LOGO);
	9	or the software and/or related components protected by the following Certificate of Copyright
	10	Registration Nos.:
	11	(1) TX 5-407-055 ("Windows XP Professional");
	12	(2) TX 5-837-617 ("Office Professional 2003");
	13	(3) TX 5-837-636 ("Office Excel 2003");
	14	(4) TX 5-900-087 ("Office Outlook 2003");
	15	(5) TX 5-852-649 ("Office PowerPoint 2003");
	16	(6) TX 5-837-618 ("Publisher 2003");
	17	(7) TX 5-900-088 ("Office Word 2003");
	18	(8) TX 5-877-513 ("Business Contact Manager for Outlook 2003");
	19	(9) TX 5-901-713 ("Access 2003");
	20	and any other works now or hereafter protected by any Microsoft trademark or copyright;
	21	(b) manufacturing, assembling, producing, distributing, offering for
	22	distribution, circulating, selling, offering for sale, advertising, importing, promoting, or displaying
	23	any software program, component and/or item bearing any simulation, reproduction, counterfeit,
	24	copy, or colorable imitation of any of Microsoft's registered trademarks, service mark, or
	25	copyrights, including, but not limited to, the Trademark, Service Mark, and Copyright
	26	Registration Numbers listed in Section (2)(a) above;
	27	(c) using any simulation, reproduction, counterfeit, copy, or colorable
	28	imitation of Microsoft's registered trademarks, service mark, or copyright including, but not
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limited to, the Trademark, Service Mark, and Copyright Registration Numbers listed in Section (2)(a) above, in connection with the manufacture, assembly, production, distribution, offering for distribution, circulation, sale, offering for sale, import, advertisement, promotion, or display of any software program, component, and/or item not authorized or licensed by Microsoft;

- (d) using any false designation of origin or false description which can or is likely to lead the trade or public or individuals, erroneously to believe that any software program, component, and/or item has been manufactured, assembled, produced, distributed, offered for distribution, circulation, sold, offered for sale, imported, advertised, promoted, displayed, licensed, sponsored, approved, or authorized by or for Microsoft, when such is not true in fact;
- (e) engaging in any other activity constituting an infringement of any of Microsoft's trademarks, service mark and/or copyrights, or of Microsoft's rights in, or right to use or to exploit these trademarks, service mark, and/or copyrights; and
- (f) assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (a) through (e) above.
- (3) That the Court enter an order declaring that Defendants hold in trust, as constructive trustees for the benefit of Microsoft, their illegal profits obtained from their distribution of infringing copies of Microsoft's software, and requiring Defendants to provide Microsoft a full and complete accounting of all amounts due and owing to Microsoft as a result of Defendants' illegal activities.
  - (4) That the Court order Defendants to pay Microsoft's damages as follows:
    - (a) Microsoft's damages and Defendants' profits pursuant to 17 U.S.C.
       § 504(b), or in the alternative, enhanced statutory damages pursuant to
       17 U.S.C. § 504(c)(2), for Defendants' willful infringement of Microsoft's copyrights;
    - (b) Microsoft's damages and Defendants' profits pursuant to 15 U.S.C. § 1117(a), trebled pursuant to 15 U.S.C. § 1117(b) for Defendants' willful violation of Microsoft's registered trademarks and service mark, or in the alternative statutory damages pursuant to 15 U.S.C. § 1117(c) for each

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1	counterfeit mark; and
2	(c) Microsoft's damages and Defendants' profits pursuant to California
3	common law;
4	(5) That the Court order Defendants to pay to Microsoft both the costs of this action
5	and the reasonable attorneys' fees incurred by it in prosecuting this action; and
6	(6) That the Court grant to Microsoft such other and additional relief as is just and
7	proper.
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9	DATED: October 2009 PERKINS COIE LLP
10	DATES: General
11	By: VV Katherine M. Dugdale
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13	Attorneys for Plaintiff MICROSOFT CORPORATION
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### CERTIFICATE OF REGISTRATION



This Certificate issued under the seel of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

For a Nondremativ Literary Work UNITED STATES COPYRIGHT OFFICE

TX 5-407-055

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Nov. 6. 2001

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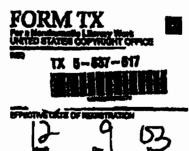
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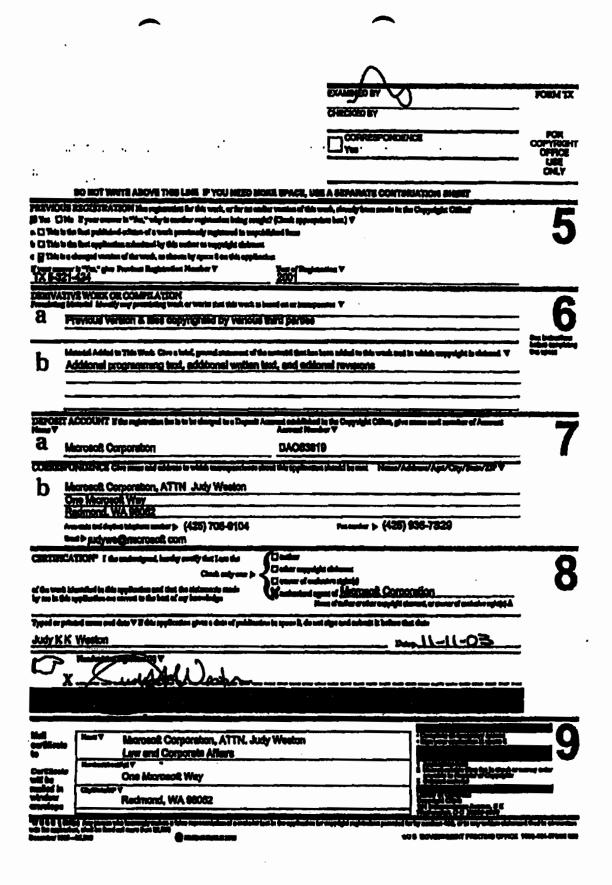


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Marybeth Peters
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Int. Cls.: 9 and 42

Prior U.S. Cls.: 26, 38 and 101

### United States Patent and Trademark Office

Reg. No. 1,200,236.

Registered Jul. 6, 1982

TRADEMARK SERVICE MARK Principal Register

### **MICROSOFT**

Microsoft (partnership) Suite 819 10800 NE. 8th Bellevue, Wash. 98004 VICES, in CLASS 42 (U.S. Cl. 101).

First use Nov. 12, 1975; in commerce Nov. 12, 1975.

For: COMPUTER PROGRAMS, in CLASS 9 (U.S. Cls. 26 and 38).

Ser. No. 236,080, filed Oct. 22, 1979.

First use Nov. 12, 1975; in commerce Nov. 12, 1975.

B. H. VERTIZ, Primary Examiner

For: COMPUTER PROGRAMMING SER-

CHERYL LYNNE HENDERSON, Examiner

#### Certificate of Correction

Registered July 6, 1982

Registration No. 1,200,236

Microsoft Corporation, by change of name and assignment from Microsoft

It is hereby certified that the above identified registration is in error requiring correction as follows:

In the statement, column 1, before line 1, Microsoft Corporation (Washington corporation), 10700 Northup Way, Bellevue, Wash. 98004, by change of name and assignment from should be inserted.

The said registration should be read as corrected above. Signed and sealed this 3rd day of April 1984.



Attest: Mahre Hem

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Exhibit 10 Page 1

Int. Cl.: 16

Prior U.S. Cl.: 38

# United States Patent and Trademark Office

Reg. No. 1,256,083 Registered Nov. 1, 1983

TRADEMARK Principal Register

### **MICROSOFT**

Microsoft Corporation (Washington corporation) 10700 Northup Way Bellevue, Wash. 98004 For: COMPUTER HARDWARE AND SOFT-WARE MANUALS; NEWSLETTER FEATURING INFORMATION ABOUT COMPUTER HARDWARE AND SOFTWARE AND GENERAL INFORMATION RELATING TO COMPUTERS FOR MANUFACTURERS, DISTRIBUTORS, AND USERS OF COMPUTERS AND COMPUTER SOFTWARE; AND COMPUTER DOCUMENTATION—NAMELY, REFERENCE, USER. INSTRUCTIONAL, AND GENERAL UTILITIES MANUALS AND DATA SHEETS FOR COMPUTER HARDWARE AND SOFTWARE USERS. in CLASS 16 (U.S. Cl. 38).

First use Nov. 1975; in commerce Nov. 1975.

Ser. No. 373,992, filed Jul. 12, 1982.

J. H. WEBB, Examining Attorney

Int. CL: 9

Prior U.S. Cl.: 38

United States Patent and Trademark Office Reg. No. 1,872,264
Registered Jan. 10, 1995

# TRADEMARK PRINCIPAL REGISTER

### **WINDOWS**

MICROSOFT CORPORATION (DELAWARE CORPORATION)
ONE MICROSOFT WAY
REDMOND, WA 980526399

FOR: COMPUTER PROGRAMS AND MANUALS SOLD AS A UNIT; NAMELY, GRAPHICAL OPERATING ENVIRONMENT PROGRAMS FOR MICROCOMPUTERS, IN CLASS 9 (U.S. CL. 38).

FIRST USE 10-18-1983; IN COMMERCE 10-18-1983.

SEC. 2(F).

SER. NO. 74-090,419, FILED 8-20-1990.

ESTHER BELENKER, EXAMINING ATTORNEY

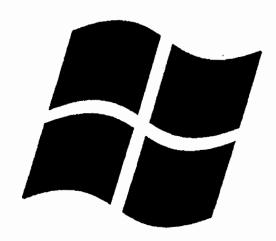
Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

United States Patent and Trademark Office

Reg. No. 2,744,843 Registered July 29, 2003

# TRADEMARK PRINCIPAL REGISTER



MICROSOFT CORPORATION (WASHINGTON CORPORATION) ONE MICROSOFT WAY REDMOND, WA 980526399

FOR: COMPUTER SOFTWARE, NAMELY, OPER-ATING SYSTEM PROGRAMS AND UTILITIES, WORD PROCESSING PROGRAMS, ADDRESS BOOK PROGRAMS, CALCULATOR PROGRAMS, TERMINAL EMULATION PROGRAMS, PRO-GRAMS FOR DOWNLOADING AND PLAYING AUDIO AND VIDEO, PROGRAMS FOR MANA-GING COMPUTER POWER SUPPLIES, PROGRAMS FOR USE IN TRANSMITTING DATA BETWEEN COMPUTERS AND OTHER ELECTRONIC DEVI-CES, COMPUTER MAINTENANCE PROGRAMS, PROGRAMS FOR PROVIDING ENHANCED SPE-CIAL EFFECTS WHILE RUNNING GAME PRO-GRAMS, PROGRAMS FOR USE IN ACCESSING AND PLAYING CDS AND DVDS, BROWSER PRO-GRAMS, ACCESSIBILITY PROGRAMS TO MAKE COMPUTERS MORE USEFUL FOR PERSONS WITH DISABILITIES; PAINT PROGRAMS, NAMELY, COMPUTER SOFTWARE FOR USE IN CREATING, EDITING AND COLORING DRAWINGS; ELECTRONIC MAIL PROGRAMS; PROGRAMS FOR ELECTRONIC CONFERENCING: COMPUTER SOFTWARE FOR PLAYING VIDEO AND ELECTRONIC GAMES AND COMPUTER GAMES; USER MANUALS THEREFOR SOLD AS A UNIT THERE-WITH: COMPUTERS; COMPUTER HARDWARE; AND FULL LINE OF COMPUTER APPLICATION PROGRAMS; COMPUTER PERIPHERALS; COMPU-

TER MICE AND POINTING DEVICES; HAND HELD COMPUTERS; DVD PLAYERS; DIGITAL CELLU-LAR PHONES; BLANK SMART CARDS, NAMELY, ENCODED ELECTRONIC CHIP CARDS CONTAIN-ING PROGRAMMING FOR VARIOUS BUSINESS AND TECHNICAL FUNCTIONS; COMMUNICA-TION SERVERS, AND COMPUTER APPLICATION PROGRAMS AND OPERATING SYSTEM PRO-GRAMS FOR USE THEREWITH; COMPUTER PRO-GRAMS FOR MANAGING COMMUNICATIONS AND DATA EXCHANGE BETWEEN COMPUTERS AND ELECTRONIC DEVICES; VIDEO GAME MA-CHINES FOR USE WITH TELEVISIONS AND COM-PUTERS, AND OPERATING SYSTEM SOFTWARE FOR USE THEREWITH; OPERATING SYSTEM SOFTWARE FOR USE IN PLAYING ELECTRONIC GAMES; COMPUTER HARDWARE AND PERIPH-ERALS; COMPUTER KEYBOARDS; COMPUTER AND VIDEO GAME JOYSTICKS, VIDEO GAME INTERACTIVE CONTROL FLOOR PADS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 3-26-2001; IN COMMERCE 3-26-2001.

OWNER OF U.S. REG. NOS. 1,815,350, 1,816,354, AND OTHERS.

THE MARK CONSISTS OF A FLAG DESIGN. THE UPPER LEFT PORTION OF THE FLAG IS RED. THE LOWER LEFT PORTION IS BLUE, THE UPPER RIGHT PORTION IS GREEN, AND THE LOWER RIGHT PORTION IS YELLOW. COLOR IS CLAIMED AS PART OF THE MARK.

Reg. No. 1,475,795

lat. a .: 9

Prior U.S. CL.: 36

United States Patent and Trademark Office

Corrector

Reg. No. 1,475,795 Registered Feb. 9, 1988 OG Dete June 28, 1988

#### TRADEMARK PRINCIPAL REGISTER

#### POWERPOINT

COMMER(

987.

MICROSOFT CORPORATION (DELA-WARE CORPORATION) BOX 97017 IGO1 NE WAY RODMOND, WA 93019911, ASSIGNEE OF FORETHOUGHT, INC. (CALIFOR-NIA CORPORATION) SUNNYVALE. FOR: PRERECORDED COMPUTER PROGRAMS RECORDED ON MAGNET-IC DISKS, (N CLASS 9 (U.S. CL. 14). FIRST USE 4-20-1917; IN COMMERCE 4-20-1917.

SER. NO. 669,735, FILED 6-29-1917.

INING ATTO



In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark: Office to be affixed on June 28, 1988.

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 9

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Prior U.S. Cl.: 38

# United States Patent and Trademark Office Registered Dec. 22, 199;

# TRADEMARK PRINCIPAL REGISTER

### MICROSOFT ACCESS

MICROSOFT CORPORATION (DELAWARE CORPORATION)
ONE MICROSOFT WAY
REDMOND, WA 180526399

FIRST USE 9-19-1985; IN COMMERCE 9-19-1985.

OWNER OF U.S. REG. NOS. 1,200,216, 1,682,075
AND OTHERS.

FOR: COMPUTER PROGRAMS FOR USE WITH DATA BASES AND MANUALS THERE-FOR, SOLD AS A UNIT, IN CLASS 9 (U.S. CL. 16).

. SER. NO. 74-212,857, FILED 5-6-1991.

KATHLEEN COONEY, EXAMINING ATTORNEY

Int. Cl.: 9

Prior U.S. Cls.: 21, 23, 26, 36, and 38

Reg. No. 2,188,125

United States Patent and Trademark Office

Registered Sep. 8, 1998

# TRADEMARK PRINCIPAL REGISTER

### **OUTLOOK**

MICROSOFT CORPORATION (WASHINGTON CORPORATION)
ONE MICROSOFT WAY
REDMOND, WA 980526399 MICROSOFT CORPORATION)

FOR: COMPUTER I'ROGRAMS FOR FRO-VIDING ENHANCED ELECTRONIC MAIL AND SCHEDULING CAPABILITIES, FOR USE BY INDIVIDUAL COMPUTER USERS, NAMELY, COMPUTER PROGRAMS FOR MAN-AGING, VIEWING, AND EDITING FILES, DOCUMENTS, ELECTRONIC MAIL MES-SAGES AND PRIVATE NETWORK AND GLOBAL COMPUTER NETWORK COMMUNI-CATIONS; COMPUTER PROGRAMS FOR MEETING AND EVENT SCHEDULING, MAN- AGING GROUP CALENDARS, TASK DELE-GATION AND REPORTING, RECORDING NOTES, TRANSFERRING DATA TO AND FROM DATA BASES AND TO AND FROM COMPUTER PROGRAMS AND COMPUTER FILES; ADDRESS BOOK I'ROGRAMS, TELE-PIIONE DIALING PROGRAMS, PROGRAMS FOR CORRECTING TYPOGRAPHICAL AND CAPITALIZATION ERRORS, I'ROGRAMS FOR TALLYING VOTING RESPONSES; AND INSTRUCTION MANUALS THEREFOR SOLD AS A UNIT, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 1-1-1997; IN COMMERCE 1-1-1997.

SN 75-053,439, FILED 2-5-1996.

FRANCES G. SMITH, EXAMINING ATTOR-



### CERTIFICATE OF REGISTRATION PRINCIPAL REGISTER

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office, that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Commissioner of Patents and Trademarks, and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are a part of this certificate.

This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.



Commissioner of Patents and Trademarks

Int. Cl.: 9

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Prior U.S. Cls.: 21, 23, 26, 36 and 38

Reg. No. 2,999,281

United States Patent and Trademark Office

Registered Sep. 20, 2005 OG Date May 16, 2006







MICROSOFT CORPORATION (WASHINGTON CORPORATION)
ONE MICROSOFT WAY
REDMOND, WA 980516399
THE MARK CONSISTS OF FOUR
SQUARE CROSS-SECTION SOLIDS EACH
HAVING A GENERALLY SQUARESHAPED FRAME EXTENDING OUTWARDLY THEREFROM. COLOR IS
CLAIMED AS A PART OF THE MARK.
THE UPPER LEFT-HAND FRAME IS
RED FADING TO ORANGE AND THE
LOPPER LEFT-HAND SQUARE IS ORANGE. THE UPPER RIGHT-HAND
FRAME AND SQUARE ARE BLUE. THE
LOWER LEFT-HAND FRAME AND
SQUARE ARE YELLOW. THE LOWER
RIGHT-HAND FRAME AND
SQUARE ARE YELLOW. THE LOWER
RIGHT-HAND FRAME AND
SQUARE ARE GREEN. ARE GREEN.

FOR: COMPUTER SOFTWARE, NAMELY, COMPUTER SERVER SOFTWARE FOR USE IN REAL-TIME COMMUNICATIONS FEATURING INSTANT MESSAGING, AUDIO, VIDEO AND DATA EXCHANGE, WEB CONFERENCING AND DOCUMENT SHARING; COMPUTER UTILITY PROGRAMS; COMPUTER SOFTWARE DEVELOPMENT PROGRAMS; COMPUTER SECUR-

ITY AND AUTHENTICATION SOFTWARE FOR CONTROLLING ACCESS TO AND COMMUNICATIONS WITH COMPUTERS; APPLICATION AND BUSINESS SOFTWARE FOR USE IN WORD PROCESSING, SPREAD. SHEETS, DATABASE MANAGEMENT, DATA COLLECTION, DATA ANALYSIS, GRAPHICS. CAD, CAM FOR GENERAL USE, PRESENTATION GRAPHICS. EMAIL, CALENDAR, SCHEDULING, MANAGING MAILING ADDRESS, TELEPHONE, EMAIL ADDRESS AND OTHER CONTACT INFORMATION, MAPPING, GEOGRAPHICAL LOCATIONS, ACCOUNTING, CUSTOMER RELATIONSHIP MANAGEMENT, PROJECT MANAGEMENT, DESKTOP PUBLISHING, AND WEB PUBLISHING; COMPUTER SOFTWARE FOR MANIPULATING VIDEO, AUDIO AND GRAPHICS; COMPUTER GAME SOFTWARE; COMPUTER COMMUNICATIONS SOFTWARE FOR MANAGING THE EXCHANGE OF COMMUNICATIONS AND DATA AND INFORMATION OVER COMPUTER NETWORKS, WIRELESS NETWORKS, AND GLOBAL COMMUNICATIONS SOFTWARE FOR USE IN

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on May 16, 2006.

DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE

ACCESSING WEBSITES AND EXCHANGING INFORMATION AND DATA AND OBTAINING SERVICES FROM WEBSITES, ALL IN THE FIELDS OF BUSINESS MANAGEMENT AND INFORMATION; COMPUTER SOFTWARE FOR USE IN DEVELOPING WEBSITES, OPERATING ELECTRONIC MAIL AND PROVIDING COMPUTER SECURITY; COMPUTER E-COMMERCE SOFTWARE TO ALLOW USERS TO PERFORM ELECTRONIC BUSINESS TRANSACTIONS VIA A GLOBAL COMPUTER NETWORK; COMPUTER SOFTWARE FOR NOTE-TAKING, NAMELY, COMPU-

TER SOFTWARE FOR RECORDING, ORGANIZING. EDITING AND TRANSMITTING INFORMATION IN TYPED, HANDWRITTEN AND VOICE FORMAT: COMPUTER COMMUNICATIONS SOFTWARE FOR ACCESSING WEB MESSAGING AND SHARED DOCUMENTS FROM WEBSITES ON THE INTERNET: AND HOUSE MARK FOR A FULL LINE OF BUSINESS SOFTWARE APPLICATIONS, IN CLASS 9 (U.S. CLS 21, 2), 26, 36 AND 38).

FIRST USE 2-19-2003; IN COMMERCE 2-19-2003

2-19-2003. SER. NO. 78-976,277, FILED 11-25-2002.

In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark

Office to be affixed on May 16, 2006.

DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE